

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2501/Bang/2019
Assessment Year : 2013 - 14

The Asst. Commissioner of Income Tax, Circle-1(2)(1), Bengaluru.	Vs.	M/s CEC Soma CICI Joint Venture, Opp. Gate No.20, Near M Chinnaswamy Stadium, M.G Road, Bengaluru-560 001. PAN - AAAAC 8081 E
APPELLANT		RESPONDENT

Appellant by	:	Shri V Srinivasan, Advocate
Respondent by	:	Shri Muzaffar Hussain, CIT (DR)

Date of Hearing	:	14-09-2020
Date of Pronouncement	:	09-10-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 01/08/2019 passed by Ld.CIT(A), Koramangala, Bangalore, for assessment year 2013-14 on following grounds of appeal:

“1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. The Ld. CIT (A) erred in deleting the Disallowance of Rs. 7,85,14,570/- made by AO towards the provisions for future expenses claimed.

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.”

Brief facts of the case are as under:

2. Assessee is an Association of persons carrying on business of civil construction. It has been submitted that, assessee was formed by 3 distinct parties to secure eligibility/qualification for bidding for tender floated by BMRCL for construction of stations, tunnels for Metro line from Queens Circle to Majestic, in Bangalore. It has been submitted that, assessee was the successful bidder in securing work from BMR sale on a fixed lump sum contract of Rs.995.20 crores. It is submitted that, assessee started executing in the said work from assessment year 2009-10.

3. For year under consideration assessee filed its return of income on 30/11/2013, declaring gross total income at 'nil'. Assessee claimed current year business loss at Rs.2,38,02,141/-. The case was selected for scrutiny and notice under section 143(2) and 142(1) of the Act was issued to assessee in response to which, representative of assessee appeared before Ld.AO and filed requisite details as called for.

4. Ld.AO observed that assessee shown outstanding expenses towards provision for expenses, amounting to Rs.26,64,07,546/- out of which, Rs.7,85,14,570/- has been claimed as expenditure towards provision for future expenses for the current year. Assessee was called upon to show cause as to why the same should not be disallowed and added back to the total income for year under consideration. In response to the notice issued, assessee filed its reply dated 16/11/2016 stating that, the expenditure has been identified but to whom the work has been entrusted as not been decided as on 31/03/2013. It was also submitted that, similar provision was made for expenditure in previous asst. years, being 2011-12 and 2012-13. Ld. AO perused submissions filed by assessee and called upon assessee once again to explain the reason for unbelievable amount claimed as expenditure in profit and loss account.

5. Upon receipt of details filed by assessee, Ld.AO was of the opinion that, such type of contingent liabilities were not deductible as held by *Hon'ble Supreme Court* in case of *Indian Molasses Company Ltd vs CIT*, reported in (1959) 37 ITR 66. He also placed reliance on decision of *Hon'ble Karnataka High Court* in case of *CIT vs Microland Ltd* reported in (2012) 347 ITR 613.

Ld.AO thus was of opinion that, provision in question is yet to be crystallised and was loaded with uncertainty of event to cause a liability, and hence the same was not allowable. He placed reliance on decision by *Hon'ble Supreme Court* in case of *CIT vs Rotork Controls India Pvt. Ltd.*,

6. Ld.AO thus disallowed deduction of Rs.7,85,14,570/- claimed by assessee as provision for possible future claims.

7. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) referred to order passed by this *Tribunal* dated 03/05/2019, for assessment year 2011-12 and 2012-13 in ITA No.126 and 1822/Bang/2016, wherein this *Tribunal*, relying on decision of Hon'ble Supreme Court in case of *BEML Ltd.*, reported in 245 ITR 482 took a view that, provision can be allowed as deduction provided the 2 conditions stands satisfied namely:

(1) incurring of liability must be certain and

(2) the basis of quantification of the future expenses should be scientific and reasonable.

8. Ld.CIT(A) observed that, this *Tribunal* allowed claim of assessee, since both these conditions stood satisfied in assessment year 2011-12 and 2012-13.

9. Aggrieved by order of Ld.CIT(A), revenue is in appeal before us now.

10. Ld.CIT.DR submitted that, all issues raised in present appeal are in respect of provision allowed by Ld.CIT(A). At the outset, Ld.CIT.DR submitted that, future payments considered by this *Tribunal* in assessment year 2011-12 and 2012-13 were related to work which is not similar to year under consideration. He submitted that, for year under consideration assessee has not established/demonstrated nature of payments, for which estimation has been made under the provision for future claims.

He thus submitted that, issue may be remanded back for verification in light of Agreement entered into by assessee with BMR CL.

11. On the contrary, Ld.AR submitted that, sum of Rs.33,72,01,011/- has been provided towards outstanding expenses which fell due and was discharged during the year. The 2nd proviso was made towards future expenses amounting to Rs.7,85,14,570/-. Ld.AR submitted that, this is a case where, assessee has to incur certain expenditure without any further billing, as he submitted that these expenses are built into overall cost of the contract awarded by BMRCL. It has been submitted that, assessee therefore thought it fit to make a provision for these expenses that are required to be met at the end of the project for which no billing could be made out of profit derived in the current year. It has thus been submitted that cost of unbilled works required to be executed at the end of the project has to be provided on *pro rata* over entire period of contract by estimating the same on scientific and rational based on engineering estimates for the same.

12. He thus submitted that provision satisfies both conditions laid down by *Hon'ble Supreme Court* referred to by this *Tribunal* in preceding assessment years.

13. We have perused submissions advanced by both sides in light of records placed before us.

14. From the records, we note that, Ld.AO did not verify agreement with BMRCL and conditions stipulated therein.

Assessee has referred to page 63 of paper book, wherein, year wise provisions made an actual amount of expenses incurred debited to provision account has been summarised. Page 64-74 of paper book & Ledger extract of expenses so incurred, for which, provisions were created in the past. It has also been submitted that, certain expenses has been incurred by assessee over and above the provision which has been tabulated at page 271-73 of paper book that does not form part of lump sum contract revenue.

15. We note that, authorities below have not looked into the documents referred to by assessee before us. We also agree with Ld.CIT DR that, nature of provisions considered by this *Tribunal* in preceding years are not similar to future claim provided for by assessee during the year under consideration amounting to Rs.7,85,14,570/-. It is also noted that, assessee submitted details of work, which was to be incurred by assessee in preceding year against which, provision was made. Also that before this *Tribunal* assessee demonstrated that, the provisions were subsequently debited at the end of the year as the expenditure had been incurred by assessee in respect of the same. In the interest of Justice, we remand the issue to Ld.AO to verify the submissions of assessee in light of the contract entered into with BMRCL. Assessee is directed to furnish all requisite details in support of its claim. Ld.AO is then directed to consider the claim of assessee in accordance with law.

Accordingly, grounds raised by revenue stands allowed for statistical purposes.

In the result appeal filed by revenue stands allowed for statistical purposes.

Order pronounced in the open court on 9th Oct, 2020

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 9th Oct, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-10-2020		Sr.PS
3.	Draft proposed & placed before the second member	-10-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-10-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-10-2020		Sr.PS/PS
6.	Kept for pronouncement on	-10-2020		Sr.PS
7.	Date of uploading the order on Website	-10-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-10-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS